

FILED

AUG 20 2013

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

Clerk, U.S. District Court
District Of Montana
Missoula

MISSOULA DIVISION

JAMES GENE MARTIN,

Cause No. CV 13-173-M-DWM-JCL

Petitioner,

vs.

FINDINGS AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

MARTIN FRINK, Warden; Attorney
General of the State of Montana,

Respondents.

On August 19, 2013, Petitioner James Martin moved to proceed in forma pauperis with this action for writ of habeas corpus under 28 U.S.C. § 2254. Martin is a state prisoner proceeding pro se.

After reviewing the motion and supporting account statement, I find Martin has sufficiently shown he cannot afford to pay all costs that may be associated with this action. The motion to proceed in forma pauperis will be granted.

Martin's claims, however, are frivolous. Prosecution by Information is consistent with the federal guarantee of due process. *Hurtado v. California*, 110 U.S.

516, 538 (1884). The petition should be denied for lack of merit.

Martin does not make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). A certificate of appealability is not warranted.

Based on the foregoing, the Court enters the following:

ORDER

Martin's motion to proceed in forma pauperis (doc. 2) is GRANTED. The Clerk of Court shall waive payment of the filing fee.

The Court also enters the following:

RECOMMENDATION

1. The Petition (doc. 1) should be DENIED for lack of merit.
2. The Clerk of Court should be directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.
3. A certificate of appealability should be DENIED.

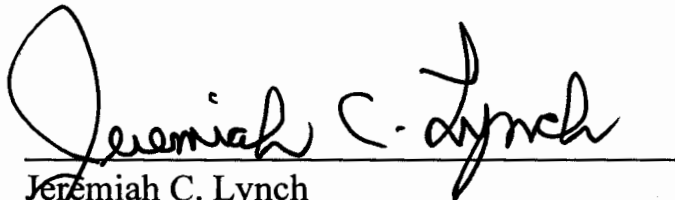
NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), Martin may serve and file written objections to this Findings and Recommendation within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. If Martin files objections, he must

itemize each factual finding to which objection is made and must identify the evidence in the record he relies on to contradict that finding; and he must itemize each recommendation to which objection is made and must set forth the authority he relies on to contradict that recommendation. Failure to assert a relevant fact or argument in objection to this Findings and Recommendation may preclude Martin from relying on that fact or argument at a later stage of the proceeding. A district judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendation. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Martin must immediately notify the Court of any change in his mailing address by filing a "Notice of Change of Address." Failure to do so may result in dismissal of his case without notice to him.

DATED this 20th day of August, 2013.


Jeremiah C. Lynch
United States Magistrate Judge